IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.978 OF 2007.

Appanna Shankar Shirke & Ors. ...Appellants

Versus

Smt Indirabai Govind Yadav & Ors. ...Respondents

Shri N.J.Patil for the Appellants.

Shri A.R.S.Baxi for the Respondent Nos.2,3,5 and 6.

CORAM : ABHAY S.OKA, J.
DATED : 18th December, 2007.

P.C.:

1. Heard advocates appearing for the parties. The appellants are the original defendants who have suffered a decree for removal of encroachment. The decree has been confirmed in appeal.

2. The first submission of the advocate for the appellants is that the survey map prepared by the survey officer cannot be relied upon as no notice was issued to the appellants prior to carrying out survey. In the alternative he submitted that there is more than sufficient evidence on record to show that the appellants have perfected their title to the alleged encroached portion by adverse possession.

3. I have given careful consideration to the submissions. I have perused the impugned judgment and notes of evidence. The appellate Court has observed

that the first witness examined by the appellants did not depose that survey officer did not serve any notice prior to carrying out survey. As the said contention was not raised specifically on oath by the witness examined by the appellants, the courts below and especially the appellate Court has not accepted the submission of the appellants that the survey was carried out without notice to the appellants. The map prepared by the survey officer appointed under the Maharashtra Land Revenue Code shows encroachment as alleged by the respondents (original plaintiffs). In so far as plea of adverse possession is concerned, there are concurrent findings of fact recorded by the Courts below. As the suit was on title, the same will be governed by Article 65 of the Limitation Act, 1963. The period of limitation of 12 years starts on the date on which possession of a defendant becomes adverse. In absence of a specific case made out by the appellants that their possession of the encroached portion became adverse to the knowledge of the original plaintiffs from a particular point of time, the Courts below were justified in not accepting the contentions raised by the appellants. In view of the concurrent findings of fact, no substantial question of law arises. Accordingly, Second Appeal is dismissed with no orders as to costs.

JUDGE